Supreme Court, U. S.
FILED
FEB 28 1979
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

---

**No. 78-1196**

---

COUNTY OF THURSTON, STATE OF NEBRASKA, *Petitioner,*

v.

CECIL ANDRUS, SECRETARY OF INTERIOR, UNITED STATES OF AMERICA, WYMAN A. BABBY, AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF INTERIOR, and FLOYD R. THIEMAN, ACTING SUPERINTENDENT, WINNEBAGO AGENCY, BUREAU OF INDIAN AFFAIRS, and THE OMAHA TRIBE OF INDIANS and THE WINNEBAGO TRIBE OF INDIANS, *Respondents.*

---

## BRIEF OF THE OMAHA AND WINNEBAGO TRIBES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---

DANIEL H. ISRAEL
JEANNE S. WHITEING
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760

*Counsel for Respondents Omaha and Winnebago Tribes of Indians*

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

---

No. 78-1196

---

COUNTY OF THURSTON, STATE OF NEBRASKA, *Petitioner,*

v.

CECIL ANDRUS, SECRETARY OF INTERIOR, UNITED STATES OF AMERICA, WYMAN A. BABBY, AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF INTERIOR, and FLOYD R. THIEMAN, ACTING SUPERINTENDENT, WINNEBAGO AGENCY, BUREAU OF INDIAN AFFAIRS, and THE OMAHA TRIBE OF INDIANS and THE WINNEBAGO TRIBE OF INDIANS, *Respondents.*

---

## BRIEF OF THE OMAHA AND WINNEBAGO TRIBES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---

Respondents submit that Petitioners' Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit should be denied for the following reasons:

1. The opinions of both the lower courts [the Court of Appeals and the District Court] correctly rely on important Indian law principles recognizing vested allotment tax immunities established by this Court in

*United States* v. *Rickert,* 188 U.S. 432 (1903); *Choate* v. *Trapp,* 224 U.S. 665 (1912), and *Squire* v. *Capoeman,* 351 U.S. 1 (1956).

2. Similarly the opinions below rely on longstanding decisions of this Court which hold that once the allotment tax immunity vests an allottee must consent to any subsequent taxation. *Sweet* v. *Schock,* 245 U.S. 192 (1917); *Mahnomen County* v. *United States,* 319 U.S. 474 (1943).

3. The opinions below are of narrow applicability. This case is not of national importance and affects only the parties involved in the Brown-Stephens Act, Act of December 30, 1916, Pub.L. No. 291, 39 Stat. 865 —Thurston County, Nebraska and Indian allottees who are members of the Omaha and Winnebago Tribes.

4. This case is not one of first impression. Both the Court of Appeals and the District Court expressly relied on a twenty-eight-year old case which considered the tax liabilities of Indian allottees under the Brown-Stephens Act. *Allbaugh* v. *United States,* 184 F.2d 109 (8th Cir. 1950), *cert. denied,* 340 U.S. 905 (1950).

For the above reasons, respondents submit that the Writ of Certiorari should be denied.

DATED: February 28, 1979.

Respectfully submitted,

DANIEL H. ISRAEL
JEANNE S. WHITEING
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760

*Counsel for Respondents*
*Omaha and Winnebago Tribes*
*of Indians*